

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

THOMAS KELLER,

Defendant.

Case No. 18-cr-00462-VC-1

**ORDER GRANTING THE DEFENSE'S
MOTION FOR JUDGMENT OF
ACQUITTAL AS TO COUNT ELEVEN**

The defense's motion for judgment of acquittal is granted as to count eleven. Even drawing every reasonable inference in the government's favor, no reasonable juror could conclude beyond a reasonable doubt that Keller intended to defraud the Medicare program based on the evidence presented in the government's case in chief. If the government were able to obtain a conviction for health care fraud on the evidence it has presented, any billing mistake could give rise to criminal prosecution. This is not a close call. Health care fraud is not a strict liability crime.

A note on the procedural posture of this motion. After the government rested and the defense moved for judgment of acquittal on count eleven, the Court expressed an interest in ruling immediately. The government urged the Court to wait until the jury reached its verdict. The defense stated that it did not object to waiting, probably because it perceived that the government's decision to charge count eleven was backfiring: witnesses the defense would call regarding count eleven would only weaken the government's case on that count while also helping the defendant's case with respect to counts one through ten.

The Court decided to defer to the parties and take the motion under advisement. But the

testimony taken the following morning highlighted just how much time was being wasted, and would continue to be wasted, for the sixteen members of the community serving as the jury in this case, not to mention the witnesses. The Court has therefore decided not to keep the motion under advisement any longer. Not another moment will be wasted on this meritless charge.

After judgment has been entered in this case, the Court respectfully requests from the United States Attorney's Office an explanation of how count eleven was presented to the grand jury, how that presentation differed from the government's presentation at trial, and why the government did not move to dismiss this count before trial once it became clear that the theory apparently presented to the grand jury could not be substantiated.

IT IS SO ORDERED.

Dated: October 27, 2022



VINCE CHHABRIA
United States District Judge